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Beverly Smith

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of the supreme court,
court of appeals and
tax court

DARDEN, Judge

STATEMENT OF THE CASE

Donald R. Orman, Jr. appeals the sentence imposed following the revocation of his probation for receiving stolen property, as a class D felony.¹

We affirm.

ISSUE

Whether Orman's sentence is inappropriate.

FACTS

The facts most favorable to the ruling indicate that on October 16, 2006, after the trial court advised Orman of his rights and established a factual basis, it accepted Orman's plea of guilty to the offense of receiving stolen property, as a class D felony. The trial court then imposed a sentence of eighteen months; the same being suspended to probation, in accordance with his written plea agreement.

The conditions of Orman's probation included the following requirements: to refrain from the use of illegal drugs; to obey the lawful orders of his probation officer; to report periodically to the Vigo County Probation Department; and to complete forty hours of community service and report the same to Community Corrections.

In December of 2006, Orman failed to report to the Vigo County Probation Department. On January 29, 2007, Orman's probation officer ordered him to take two drug screens per week. On February 1, 2007, Orman tested positive for marijuana.

On March 7, 2007, the Probation Department filed a petition to revoke Orman's probation. The notice alleged that Orman had (1) tested positive for marijuana; (2) failed

¹ Ind. Code § 35-43-4-2(b).

to provide two weekly drug screens as ordered by his probation officer; (3) failed to report to the Vigo County Probation Department in December of 2006 and February of 2007; and (4) failed to contact Community Corrections to perform his required forty hours of community service.

A probation hearing was held on November 1, 2007. Orman and his probation officer entered into an agreement. Pursuant to the agreement, Orman admitted to the probation violations and the trial court took the case under review for sixty days so that Orman could place himself in compliance with the requirements of probation and set a review hearing for January 10, 2008.

On January 10, 2008, Orman failed to appear at his review hearing, and the trial court issued a bench warrant for his arrest. The Vigo County Sheriff's Department arrested Orman, and the trial court scheduled another hearing for January 22, 2008.

On January 22, 2008, the trial court heard the foregoing facts. Orman's probation officer testified that Orman had not reported for a weekly drug screen since December 3, 2007, and that he had not completed any of his required forty hours of community service, despite having been given numerous opportunities to do so. Orman testified that he had completed thirty-six hours of his required community service with the West Terre Haute Police Department, but that he had failed to report the hours to Community Corrections. Further, Orman acknowledged that he had not submitted to a drug screen since December 3, 2007, because he had started smoking marijuana. Orman testified that he missed his January 10, 2008 review hearing due to lack of knowledge. The trial court

revoked Orman's probation and ordered him to serve the balance of his eighteen-month sentence in the Indiana Department of Correction.²

DECISION

Orman argues that his executed sentence is inappropriate in light of the nature of the offense and his character. We disagree.

Pursuant to Indiana Code section 35-38-2-3(g)(3), if the court finds that a person has violated a condition of probation at any time before termination of the probationary period, and the petition to revoke is filed within the probationary period, the court may order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Probation is a matter of grace left to the trial court's discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (citing *Sanders v. State*, 825 N.E. 2d 952 (Ind. Ct. App. 2005)). The trial court determines the conditions of probation and may revoke probation if the conditions are violated. *Prewitt*, 878 N.E.2d at 188 (citing *Goonen v. State*, 705 N.E.2d 209 (Ind. Ct. App. 1999)).

Once a trial court has exercised its discretion by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed thereafter. *Prewitt*, 878 N.E.2d at 188. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. *Id.* Accordingly, a trial court's sentencing

² Before Orman's probation was revoked, he had served fifty actual days. After his probation was revoked, Orman's sentence was reduced by an additional 50 days for good time credit.

decisions for probation violations are reviewable using the abuse of discretion standard. *Id.* An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* (citing *Guillen v. State*, 829 N.E.2d 142 (Ind. Ct. App. 2005)).

Orman argues that the trial court's order requiring him to serve eighteen months of his previously-suspended sentence in the Indiana Department of Correction is excessive. Specifically, Orman argues that, "The offense of receiving stolen property, although a serious felony, is not a crime of violence." Orman Br. at 9. Orman also argues that his admission of guilt speaks to the nature of his character and should be considered a substantial mitigating circumstance.

Although Orman cites *Banks v. State*, 841 N.E.2d 654 (Ind. Ct. App. 2006) and *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007) to buttress his contention that we should apply Indiana Appellate Rule 7(B) to review the trial court's order, our supreme court has explicitly stated that Indiana Appellate Rule 7(B) is not the correct standard to apply when reviewing a sentence imposed for a probation violation. *Prewitt*, at 188. As stated above, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Id.*

The evidence most favorable to the trial court's ruling reveals that while on probation, Orman committed several serious violations in a five-month period. These violations included testing positive for marijuana; failing to provide two weekly drug screens as ordered by his probation officer; failing to report to the Vigo County Probation Department in December of 2006 and February of 2007; and failing to contact

Community Corrections to perform his required forty hours of community service. Despite being given an additional opportunity of sixty days to bring himself into compliance with the requirements of probation, Orman, instead, continued to use marijuana and failed to appear before the trial court at his review hearing.

Orman testified that he had in fact completed thirty-six hours of his required forty hours of community service; but, that he had failed to report any of his hours to Community Corrections. Other than his own self-serving testimony, Orman failed to produce any documentary evidence that he had completed thirty-six hours of his required community service. Moreover, Orman admitted to having violated no less than four conditions of his probation. The violation of only one condition of probation is sufficient to revoke probation. *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*.

We will affirm a probation revocation if there is substantial evidence of probative value that a defendant has violated any term of the probation. *Brabandt v. State*, 797 N.E. 2d 855, 861 (Ind. Ct. App. 2003). Here, Orman's own admission to violating several terms of probation is substantial evidence of probative value warranting the revocation of his probation.

Affirmed.

NAJAM, J., and BROWN, J., concur.